

The **Noblesville Board of Zoning Appeals** met on Monday, May 4, 2020. Due to COVID-19, some Board members and City staff attended in person, while others utilized Microsoft Teams to attend via video- and audio-conferencing. Those attending remotely are so noted below. Members in attendance were as follows:

Mike Field .....Chairman  
Dave Burtner .....Vice-Chairman  
James Hanlon ..... Citizen Member  
Dan Mac Innis ..... Citizen Member  
Barry McNulty ..... Citizen Member (remote)

Others in attendance included Assistant Director Caleb Gutshall, Senior Planner Denise Aschleman, Senior Planner Oksana Polhuy (remote), Senior Planner David Hirschle (remote), City Attorney Mike Howard.

Chairman Field calls the meeting to order at 6:00 p.m.

**APPROVAL OF MINUTES**

Motion by Mr. Burtner, seconded by Mr. Hanlon to approve the March 2, 2020 Minutes as presented. AYE: Burtner, Hanlon, Field, Mac Innis, McNulty. The motion carries 5-0.

**FINDINGS OF FACT**

Motion by Mr. Burtner, seconded by Mr. Hanlon to approve the February 3, 2020 Findings of Fact for BZNA-0009-2020, BZNA-0010-2020, and BZNA-0011-2020, and the March 2, 2020 Findings of Fact for BZNA-0172-2019 as presented. AYE: Burtner, Hanlon, Field, Mac Innis, McNulty. The motion carries 5-0.

**CONTINUED BUSINESS**

<b>1. BZNA-0014-2020</b>	
<b>Location:</b>	1373 Cherry Street
<b>Applicant:</b>	Tim Ingle
<b>Description:</b>	UDO § Table 8.B – Variance of Development Standards to permit reduction of the minimum rear setback for an accessory structure (5 feet required, 3 feet requested).
<b>Staff Contact:</b>	Oksana Polhuy

Ms. Polhuy displays an aerial photograph of the site in question and relates that the property currently exhibits a 3480-square-foot residence and a 230-square-foot detached garage. She states that the applicant proposes to demolish the existing detached garage and build a new two-car garage, including a kitchen opening onto the patio, which would encroach into the rear yard setback. She displays elevation drawings of the proposed structure. She explains that the garage floorplan has the two car bays at a 90-degree angle to each other in order to preserve older trees on the site. She states that a typical newly built single-family house would be required to have at least two enclosed parking spaces, so replacing a one-car garage with a two-car garage is trying to have a commonly expected type of development on a single-family property. She state, however, due to the lot configuration and placement of the existing improvements makes it difficult to fit in a two-car garage in a way that would meet all zoning regulations.

Mr. Field asks whether the new garage will be even further from the rear property line than the existing garage. Ms. Polhuy confirms this, stating that the rear wall of the existing garage sits right at the property line, while the proposed new garage is requested at three feet from the property line. She states that accessory structures in close proximity to property lines is common in the neighborhood. She adds that the design of the proposed new structure will match the historical look of the residence. She concludes by recommending approval of the Variance based on the Findings of Fact in the Staff Report, and with conditions as listed in the Staff Report.

Mr. Tim Ingle provides locational clarification. He states that, while the main rear wall of the existing garage sits at the rear property line, the bump-out south of this main rear wall sits two feet over the rear property line, meaning that difference between the rear-most portion of the existing garage and the rear-most portion of the proposed garage is actually five feet.

Mr. Field asks for question from Board members. None being forthcoming, Mr. Field opens the public hearing. With an absence of persons wishing to speak, he closes the public hearing.

**Motion by Mr. Hanlon, seconded by Mr. Burtner, to approve application BZNA-0014-2020 based on the Findings of Fact contained in the Staff Report, with the following conditions:**

1. The proposed accessory structure shall be used for personal use and/or storage of personal materials only. The structure will not be used for any business, commercial, or industrial uses or separate residential purposes.
2. The Applicant shall sign the Acknowledgement of Variance document prepared by the Planning and Development Department Staff within 60 days of this approval. Staff will then record this document against the property and a file stamped copy of such recorded document shall be available in the Department of Planning and Development.
3. Any alterations to the approved building plan or site plan, other than those required by the Board of Zoning Appeals (BZA), shall be submitted to the Planning and Development Department prior to the alterations being made, and if necessary, a BZA hearing shall be held to review such changes.

**AYE: Hanlon, Burtner, Field, Mac Innis, McNulty. The motion carries 5-0.**

## 2. BZNA-0015-2020

<b>Location:</b>	19980 James Road
<b>Applicant:</b>	Shawn Mickelson
<b>Description:</b>	UDO § 9.B.2.C.2 – Variance of Development Standards to permit the construction of an accessory structure that exceeds the maximum height limit (17 feet permitted; 19.7 feet requested) and causes the property to exceed the maximum combined area of all accessory structures for properties between one acre and five acres in size (2,000 square feet permitted; 2,368 square feet requested).
<b>Staff Contact:</b>	Oksana Polhuy

Ms. Polhuy states that the subject site is located on the east side of James Road, about 0.35 miles west of State Road 19 (Cicero Road), and 0.4 miles north of East 196<sup>th</sup> Street. She states that the subject site contains a 3,449-square-foot single-family house with a three-car attached garage, and that it is surrounded by residential uses on most sides with the exception of the east side where it borders train tracks.

Ms. Polhuy states that the petitioner is requesting a variance of the development standards for a 2,368-square-foot detached barn to be added to his property for storing personal items and recreational vehicles (RVs) to protect them from the elements. She explains that the barn would comprise 1,920 square feet of enclosed space and a 448-square-foot lean-to/porch attached to the barn, while the total maximum permitted combined area for all detached accessory structures, in this case, is 2,000 square feet. She adds that, along with the size variance, the applicant is requesting the pole barn to be 19.7 feet tall to fit the RVs, necessitating a height variance request. She displays elevation drawings of the proposed structure.

Ms. Polhuy states that there are a few properties in the vicinity with the combined area of the detached accessory structures over what is permitted for the property. She cites a 3.16-acre property to the north of the subject site that obtained a variance of development standards for a very similar request last year; a one-acre property to the north of the previous property with about 2,500 square feet total of all detached accessory structures; and a 9.58-acre property to the west which received a variance to build several detached accessory structures up to 6,250 square feet in total.

Mr. Shawn Mickelson, 19980 James Road, states that the accessory structure will be designed with similar primary and trim colors as the residence.

Mr. Hanlon asks whether Mr. Mickelson is aware of the three conditions requested by Staff to be imposed with any approval motion. Mr. Mickelson responds that he is aware of them and agrees with them.

Mr. Field opens the public hearing. With an absence of persons wishing to speak, he closes the public hearing.

**Motion by Mr. Hanlon, seconded by Mr. Burtner, to approve application BZNA-0015-2020 based on the Findings of Fact contained in the Staff Report, with the following conditions:**

1. The proposed accessory structure shall be used for personal use and/or storage of personal materials only. The structure will not be used for any business, commercial, or industrial uses or separate residential purposes.
2. The Applicant shall sign the Acknowledgement of Variance document prepared by the Planning and Development Department Staff within 60 days of this approval. Staff will then record this document against the property and a file stamped copy of such recorded document shall be available in the Department of Planning and Development.
3. Any alterations to the approved building plan or site plan, other than those required by the Board of Zoning Appeals (BZA), shall be submitted to the Planning and Development Department prior to the alterations being made, and if necessary, a BZA hearing shall be held to review such changes.

**AYE: Hanlon, Burtner, Field, Mac Innis, McNulty. The motion carries 5-0.**

### 3. BZNA-0018-2020

<b>Location:</b>	3505 Conner Street
<b>Applicant:</b>	Jeff Meyer
<b>Description:</b>	UDO § 9.A.2 – Variance of Development Standards to permit creating a lot that does not have frontage on and access from an existing street.
<b>Staff Contact:</b>	Oksana Polhuy

Ms. Polhuy states that the subject site is a lot south of lot 2 of Gill Subdivision that is located on the south side of Conner Street, about 0.4 miles east of State Road 37. She states that the subject site is surrounded by commercial uses to the north, agricultural uses to the east and west, and vacant land to the south. She relates that the applicant is requesting a variance of development standards pursuant to UDO 9.A.2 to permit creation of a lot without street frontage and access on the street.

Ms. Polhuy states that this case is related to the granted Variance of Use BZNA-0131-2019 to use the subject site for outdoor storage. She states that one of the conditions imposed on that Variance approval was that the applicant make the subject site a legal lot for development, which is the reason for the current Variance filing. She explains that in order to develop a lot in Noblesville planning jurisdiction, a lot must have street frontage. She relates that the subject lot was created by splitting a larger lot into two pieces in 2015 by recording a new legal description with the County Recorder, but that, however, this split occurred without benefit of the review by the Noblesville Department of Planning and resulted in creation of a lot that does not meet all zoning regulations. She states that each newly created lot was then sold to different owners.

Ms. Polhuy states that the property owner of the subject site is buying the lot to the north of it on a contract and the purchase will be complete in 2023. She states that, in effect, the subject lot and the lot to the north, while separated by property lines, are used as one property. She adds that the need for street frontage comes from the need to provide for safe and convenient

access to the site, fire protection, and required off-street parking, typically assuming that there is a building on site. She states that the subject site is not planned to be developed with a building at this point or in the future, but only planned to be used as accessory outdoor storage use to the primary commercial use on the lot to the north of the subject lot. She points out that there is a driveway that crosses both lots and connects them to Conner Street. She summarizes by stating that Staff recommends approval of the Variance based on the Findings of Fact in the Staff Report and with the specific conditions therein.

Mr. Howard strongly recommends an additional condition of approval, that being that the owner of the lot to the north of the subject site dedicate a minimum 15-foot-wide ingress-egress easement along the western property line from State Road 32 to the subject site. To Mr. Hanlon's request for clarification, Mr. Howard states that there is a drive extending from State Road 32 to the subject site, but no recorded easement corresponding to that drive.

Mr. Doug Nemes, representative of the owner, states that there is no problem with granting of the ingress-egress easement discussed.

Mr. Field opens the public hearing. With an absence of persons wishing to speak, he closes the public hearing.

**Motion by Mr. Burtner, seconded by Mr. Mac Innis, to approve application BZNA-0018-2020 based on the Findings of Fact contained in the Staff Report, with the following conditions:**

1. The owner of the lot to the north of the subject site shall dedicate a minimum 15-foot-wide ingress-egress easement along the western property line from State Road 32 to the subject site.
2. The Applicant shall sign the Acknowledgement of Variance document prepared by the Planning and Development Department Staff within 60 days of this approval. Staff will then record this document against the property and a file stamped copy of such recorded document shall be available in the Department of Planning and Development.
3. Any alterations to the approved building plan or site plan, other than those required by the Board of Zoning Appeals (BZA), shall be submitted to the Planning and Development Department prior to the alterations being made, and if necessary, a BZA hearing shall be held to review such changes.

**AYE: Burtner, Mac Innis, McNulty, Hanlon, Field. The motion carries 5-0.**

**4. BZNA-0021-2020; BZNA-0022-2020; BZNA-0033-2020**

**Location:** 15239 Herriman Boulevard

**Applicant:** Wayne Kotulic, Jr

**Description:** UDO § 8.D.1.E. and Table 8.D. – Variance of Development Standards to allow a building addition to encroach into the required front building setback.

UDO § 10.0.4.C.2.c. – Variance of Development Standards to allow a second driveway per street frontage.

UDO § 10.0.4.B.1. and Table 10.0.3.B. – Variance of Development Standards to allow parking to encroach into the required front parking setback and to allow a shortfall in required parking space number.

**Staff Contact:** David Hirschle

Mr. Hirschle describes the location of the site as being within Stony Creek Industrial Park and being surrounded by other I-1 Light Industrial lots of that Park. He states that the filed variance seeking a second drive cut onto Herriman Boulevard has been withdrawn. He adds that the variance portion seeking allowance for parking to encroach into the required front parking setback has also been withdrawn, leaving the Board to consider only two items, the first being a

building addition encroaching into the platted front building setback and the second being a reduction in the required number of parking spaces.

Mr. Hirschle states that construction of a 6,450-square-foot warehouse/office addition is proposed to the south side of an existing 10,135-square-foot warehouse/office building for Texon Towel, an athletic towel sales business. He states that the first variance seeks encroachment of the platted 80-foot front building setback by six feet in order to allow construction of the building addition's east wall in the same plane as that of the existing building. He relates that the current UDO required front setback for this lot is 60 feet, but the lot was platted in 1984 with an 80-foot front setback.

Mr. Hirschle states that the addition requires accompanying parking at the rate of one space per 800 square feet of gross floor area, meaning the addition requires eight regular spaces and one handicap-accessible space to be added to the site's existing seven parking spaces. He states that the applicant proposes to add four new regular spaces and one handicap-accessible space.

Mr. Hirschle provides Staff's recommendation for approval of both variances with conditions as indicated in the Staff Report, including one that requires the signing of a Waiver of Liability Concerning Setbacks. He states that the platted 80-foot front setback could be enforced by private action by other property owners within the industrial park, and the requested Waiver would safeguard the City from such action. Mr. Mike Howard confirms that such a Waiver represents a Hold Harmless agreement ensuring that the City is protected from co-defendant status. Ms. Denise Aschleman adds that the Waiver takes the form of the standard waiver drawn up by Mr. Howard several years ago for cases in which proposed construction extends beyond a platted setback.

Mr. Wayne Kotulic, Jr. states that he does not see a problem in signing the requested Waiver of Liability Concerning Setbacks.

Mr. Field opens the public hearing. With an absence of persons wishing to speak, he closes the public hearing.

**Motion by Mr. Hanlon, seconded by Mr. Burtner, to approve applications BZNA-0021-2020 and BZNA-0033-2020 based on the Findings of Fact contained in the Staff Report, with the following conditions:**

1. The applicant shall sign a Waiver of Liability Concerning Setbacks prior to issuance of a building permit.
2. The Applicant shall sign the Acknowledgement of Variance document prepared by the Planning and Development Department Staff within 60 days of this approval. Staff will then record this document against the property and a file stamped copy of such recorded document shall be available in the Department of Planning and Development.
3. Any alterations to the approved building plan or site plan, other than those required by the Board of Zoning Appeals (BZA), shall be submitted to the Planning and Development Department prior to the alterations being made, and if necessary, a BZA hearing shall be held to review such changes.

**AYE: Hanlon, Burtner, Mac Innis, McNulty, Field. The motion carries 5-0.**

**5. BZNA-0023-2020; BZNA-0024-2020**

**Location:** 2922 Cicero Road  
**Applicant:** Jeremiah Witek

**Description:** UDO § 8.B.2.B. and Appendix C (Official Schedule of Uses) – Variance of Land Use to allow the establishment of a landscaping business in an R-1 (Low-Density Single-Family Residential) zoning district.  
UDO § 9.B.2.C.3.a. – Variance of Development Standards to allow an accessory structure to exceed the maximum allowable square footage.

**Staff Contact:** David Hirschle

Mr. Hirschle describes the parcel's existing structures as a 1488-square-foot residence and three accessory buildings totaling 1192 square feet. He brings attention to what is seen as a white rectangle near the southern property line on the aerial photograph presented, stating that this is a concrete slab upon which the applicant wishes to reconstruct a 2400-square-foot accessory structure. He adds that a previous structure of a similar size burned in late 2018 or early 2019.

Mr. Hirschle states that the uses of the structure would include the running of a small landscaping business. He states that the applicant's narrative indicates that outdoor storage would not be a feature, as all operations of the landscaping business would be confined to within the 2400-square-foot structure.

Mr. Hirschle states that nearby properties reveal examples of business use. He states that the property at the southwestern corner of the intersection of SR19 and 206<sup>th</sup> Street was granted a [Conditional Use] to allow operation of a plumbing distributor office and warehouse in a structure detached from the residence. He points out that that detached building is currently being used as an auto detailing business, a "Permitted" use in the I-1 district. He indicates that the property adjacent and to the south of this is being used as a pet grooming business and a kenneling business, the latter of which requires a Conditional Use. He adds that approval for this use has not yet been found. He states that the subject property is classified as Rural/Estate Residential in the new Comprehensive Plan's Future Land Use Map, adopted in February 2020.

Mr. Hirschle provides Staff's recommendation that the Variance of Land Use be denied, while the Variance of Development Standards for the size of the accessory structure is recommended for approval. He adds that a map of the 2+ acres of wetland on and near the subject site was provided to Board members. He adds that a letter of remonstrance has been received from the property owner of the property immediately east and adjacent to the subject site, such letter pointing out possible adverse effects to the wetlands and water table from future chemical spills related to a landscaping business.

Mr. Hanlon asks if the recommendation to deny the Variance of Land Use is based on the letter of remonstrance received. Mr. Hirschle responds that the recommendation to deny is not based on that letter but on failure to meet State Findings of Fact #4 and #5 as shown in the Staff Report. He states that the property could continue to be used as a residential parcel, and the Comprehensive Plan calls for Rural/Estate Residential uses of the property.

Discussion revolves around other non-residential uses in the area, including the property at the northeast corner of State Road 19 and 206<sup>th</sup> Street, which was approved as a one-person office, and the property at the southwest corner of that intersection, which was approved through [Conditional Use] as a plumbing distributor office and warehouse.

Mr. Jeremiah Witek, applicant, describes the proposed landscaping business as a small enterprise, "just myself, no people coming in and out" and "no trailers and trucks." He adds that "everything would just be stored inside." Regarding chemicals, he states, "I wouldn't have anything relating to chemicals inside the barn, nothing to contaminate or harm anything outside." He indicates that he would also engage in woodworking projects within the accessory structure.

Mr. Field asks what type of landscaping would be performed by the business. Mr. Witek responds that the jobs would be "mainly residential, a little bit of commercial." He indicates that there would be no brush or mulch kept on the property, as Greencycle is just across the street and he would take this material to them.

Mr. Field asks what type of work Mr. Witek envisions, plants and hardscapes being mentioned as examples. Mr. Witek responds that he does not have an interest in hardscaping, that the work performed would be the "main aesthetic stuff" such as mowing, trimming bushes, lawn treatment, and mulching.

Mr. Field opens the public hearing. Ms. Julie Fowles, resident on a property to the east, expresses concerns about effects on the wetlands and water table. She cites a possible expansion or business increase for the landscaping business and wants to make sure that any adverse effects of such expansion do not affect water quality. With an absence of other persons wishing to speak, Mr. Field closes the public hearing.

Mr. Hanlon expresses his opinion that there would be no harm in approving the Variance of Land Use, as there would be no chemical storage on the property. Mr. Field asks if the Variance of Land Use would apply only to the current ownership of the property. Mr. Howard responds that the Board would have to include this in a motion in order to limit the approval to the current owner. Ms. Aschleman adds that if such a condition is not added to a motion, the Variance of Land Use would run with the land.

**Motion by Mr. Hanlon, seconded by Mr. Burtner, to approve applications BZNA-0023-2020 and BZNA-0024-2020 with the following conditions:**

1. There shall be no bulk commercial chemical storage or use on the property. Any chemical use related to landscaping shall be limited to personal residential use on the property.
2. The Variance of Use is limited to this applicant/owner and does not run with the land.

**AYE: Hanlon, Burtner, Mac Innis, McNulty, Field. The motion carries 5-0.**

Ms. Aschleman reminds Mr. Hanlon to provide the Staff with Findings of Fact on which he based his motion to approve the Variance of Land Use.

#### **ADJOURNMENT**

The meeting is adjourned at 6:59 p.m.

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Mike Field, Chairman

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Caleb Gutshall, Secretary